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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/785,434

02/24/2004

David Arthur Welch

WELCH 4

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EXAMINER

KEEHN, RICHARD G

ART UNIT

PAPER NUMBER

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/785,434	WELCH, DAVID ARTHUR	
	Examiner	Art Unit	
	Richard G. Keehn	2456	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 April 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,5,6,8-11,15,16 and 18-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 5, 6, 8-11, 15, 16 and 18-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. **Claims 1, 5, 6, 8-11, 15, 16 and 18-20 have been examined and are pending.**
2. **Applicant's arguments are found to be non-persuasive. Consequently, this Office action is made FINAL.**

Response to Arguments

3. Applicant's arguments filed 4/24/2009 have been fully considered but they are not persuasive.
 - a. The overall tone of the arguments is nothing short of disrespectful to the Examiner and the Office. Sentences used by Attorney Brett Bornsen (46,566) include, but are not limited to, **"By doing this, the Examiner has completely disregarded the language of claim 1"; "The Examiner is really stretching to get Herbert to teach the system of claim 1"; and "With all due respect, can the Examiner really be serious here?"** Examiner recommends that Attorney refrain from the use of sarcasm when making arguments.
 - b. Applicant argues on pages 6-9 that Herbert et al. do not disclose peer communication devices and hence do not disclose the claimed limitations in claim 1. Examiner indicated in the prior office action that Herbert et al. disclose peers, albeit human, that use computer devices, but said peers perform substantially the same limitations of the claims as indicated in the prior Office action. Examiner rejected the claims under 35 U.S.C. 103(a) to teach the peer communication devices more explicitly, although Herbert et al.'s human agents

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use devices, hence are peer communication devices. Automating a process that has been performed semi-automatically, or completely manually does not render a claim non-obvious. Nonetheless, arguing that the primary reference does not disclose peer communication *devices*, when the Examiner admitted in the prior Office action that Herbert et al. do not explicitly disclose the peer communication *devices*, is unpersuasive because the combination of references disclose all of the claim limitations as indicated below in section 35 U.S.C. 103.

c. Applicant argues on page 2 that peer-to-peer networking was not argued. Although Examiner agrees the term "networking" was not argued, peer communication devices communicating with one another was argued. Peer communication devices that are in communication with one another are understood to one of ordinary skill in the art to be networking and peer-to-peer networking. Nonetheless, Examiner disclosed peer-to-peer networking in the prior Office action when rejecting the independent claims, and peer-to-peer networking teaches peer communication devices. Therefore this argument is unpersuasive.

Claim Rejections - 35 USC § 103

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

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5. Claims 1, 5, 6, 8-11, 15, 16 and 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 7,203,655 B2 (Herbert et al.), and further in view of US 2003/0083846 A1 (Curtin et al.) and US 2005/0086300 A1 (Yeager et al.).

As to Claims 1 and 11, Herbert et al. discloses a telecommunication system and method configured to provide distributed system monitoring, the telecommunication system comprising:

a control system (Herbert et al. discloses the central processing computer – Figure 1, item 120); and

a plurality of peer communication {humans using devices}, where each peer, responsive to handling telecommunications data (Herbert et al. disclose the Agents with their workstations, said agents using their workstations are the peers – Column 3, lines 42-47; Column 4, lines 48-48 disclose the contacts in a telecommunications network; Column 4, lines 57-59 disclose said contacts monitored for performance data);

the control system, responsive to receipt of the performance data from the communication devices, processes the performance data from each of the peer to generate a performance file that indicates the performance of each of the peer, and transfers the performance file to each of the peer (Herbert et al. disclose the PSS which uses the performance data from each of the communication devices to generate reports that indicate individual and group performance analysis results and provides that information to the agents – Column 4, lines 1-3, and 10-22); and

each of the peer, responsive to receipt of the performance file, processes the performance file to compare its performance to the performance of the other peer to detect a fault (Herbert et al. disclose the agents using and configuring the performance report format for comparison of aforementioned individual and group performance metrics – Column 4, lines 41-42 and Column 7, lines 63-64); and

responsive to detection of the fault, at least one of the peer processes the performance file to identify at least one recovery action, and performs the at least one recovery action to attempt to cure the fault (Herbert et al. disclose the agent detecting less than respective performance {performance fault} – Column 6, lines 25-35; Column 1, lines 23-32 disclose the agent performing the recovery action of goal setting to improve job satisfaction).

Herbert et al. disclose the communication device directly collecting performance data and sending directly to the control system, but rather these limitations are indirectly performed by the ACD. Therefore Herbert et al. do not explicitly disclose, but Curtin et al. disclose each communication device collects performance data and transfers the performance data to the control system (Curtin et al. discloses the gathering and sending of performance data by each client – Page 1, ¶ [0023]; Figure 1 shows the data is sent to the control system).

Herbert et al. disclose peers communicating on devices, but do not explicitly disclose peer-to-peer communications, but Yeager et al. disclose peer communication devices (Yeager et al. discloses the peer-to-peer network communication device monitoring – Page 21, ¶ [0270]).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine each communication device collects performance data and transfers the performance data to the control system taught by Curtin et al., with the collection of, and sending of, performance data to the control system taught by Herbert et al.

The ACD in the Herbert reference is the gatekeeper controlling all collection and reporting to the control system for the plurality of agent workstations. One of ordinary skill in the art at the time the invention was made would recognize this creates at least two problems to solve. Namely that (1) if the ACD fails, the entire reporting system fails; and (2) as workstations are replaced with newer technology, the ACD interface to said replaced workstations may also need to be modified, eventually to a point where modification is not longer possible. Hence one of ordinary skill in the art at the time the invention was made would have been motivated to place the function of collection and reporting to the controller onto the individual agents workstations so that as workstations are replaced, the ACD, as taught in Herbert et al., would not need to be redesigned or modified; and if a single collection / reporting agent fails, the whole system does not fail.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine peer communication devices taught by Yeager et al., with peer communication and monitoring taught by Herbert et al., in order to create a self-administered monitoring environment capable of fault tolerance and increased reliability (Yeager et al. - ¶¶ [0017 and 0270]).

As to Claims 5 and 15, the combination of Herbert et al., Curtin et al. and Yeager et al. discloses the telecommunications system and method of claims 4 and 14 wherein the at least one peer communication device determines if the fault is cured by the at least one recovery action, generates a report of the fault if the fault is not cured by the at least one recovery action, and transfers the report of the fault to the control system (Curtin et al. discloses the client computer sending evaluation report – Page 1, ¶ [0023]; Figure 1 shows that data being sent to the control system; Yeager et al. discloses the peer-to-peer network communication device monitoring – Page 21, ¶ [0270]).

The motivation and obviousness arguments are the same as in Claim 1.

As to Claims 6 and 16, the combination of Herbert et al., Curtin et al. and Yeager et al. discloses the telecommunications system and method of claims 5 and 15 wherein the control system, responsive to receipt of the report of the fault, identifies at least one recovery action, and performs the at least recovery action on the at least one peer communication device (Herbert et al. disclose a number of corrective recovery actions the control system can implement on the agent, including skill planning and scheduling – Column 4, lines 1-9; Yeager et al. discloses the peer-to-peer network communication device monitoring – Page 21, ¶ [0270]).

The motivation and obviousness arguments are the same as in Claim 1.

As to Claims 8 and 18, the combination of Herbert et al., Curtin et al. and Yeager et al. discloses the telecommunications system and method of claims 1 and 11, wherein: each of the peer communication devices (Curtin et al. discloses the gathering and sending of performance data by each client – Page 1, ¶ [0023]) periodically transfers the performance data to the control system (Herbert et al. discloses periodic sending intervals – Column 3, line 65; Yeager et al. discloses the peer-to-peer network communication device monitoring – Page 21, ¶ [0270]).

The motivation and obviousness arguments are the same as in Claim 1.

As to Claims 9 and 19, the combination of Herbert et al., Curtin et al. and Yeager et al. discloses the telecommunications system and method of claims 1 and 11 wherein the performance data includes a performance grade for each of the peer communication devices (Curtin et al. discloses the grading scale from Excellent to Poor – Figure 4; Yeager et al. discloses the peer-to-peer network communication device monitoring – Page 21, ¶ [0270]).

The motivation and obviousness arguments are the same as in Claim 1.

As to Claims 10 and 20, the combination of Herbert et al., Curtin et al. and Yeager et al. discloses the telecommunications system and method of claims 1 and 11 wherein the performance file includes a list of performance data for each of the peer communication devices (Herbert et al. disclose the PSS which uses the performance data from each of the communication devices to generate reports that indicate individual

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and group performance analysis results and provides that information to the agents – Column 4, lines 1-3, and 10-22; Yeager et al. discloses the peer-to-peer network communication device monitoring – Page 21, ¶ [0270])

The motivation and obviousness arguments are the same as in Claim 1.

Examiner Notes

6. Independent claims are still broad. Examiner notices that pages 7-10 of the specification contain details of communication and process not claimed. Inclusion in independent may help to overcome the cited prior art.

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Richard G. Keehn whose telephone number is 571-270-5007. The examiner can normally be reached on Monday through Thursday, 9:00am - 8:00pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bunjob Jaroenchonwanit can be reached on 571-272-3913. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

RGK

/Bunjob Jaroenchonwanit/
Supervisory Patent Examiner, Art Unit 2456